

STATE OF MINNESOTA  
OFFICE OF ADMINISTRATIVE HEARINGS  
FOR THE PUBLIC UTILITIES COMMISSION

In the Matter of the Application of Northern  
States Power Company d/b/a Xcel Energy  
for Authority to Increase Rates for Electric  
Service in Minnesota

**FIRST PREHEARING ORDER**

A prehearing conference was held before Administrative Law Judge Kathleen D. Sheehy on January 16, 2009, at the Public Utilities Commission, 350 Metro Square Building, 121 Seventh Place East, St. Paul, Minnesota. The following persons appeared:

Michael J. Bradley, Moss & Barnett, 90 South Seventh Street, 4800 Wells Fargo Center, Minneapolis, MN 55402; and Christopher B. Clark, Managing Attorney, Xcel Energy, 800 Nicollet Mall, 29<sup>th</sup> Floor, Minneapolis, MN 55402, appeared for Xcel Energy.

Linda S. Jensen and Julia Anderson, Assistant Attorneys General, 445 Minnesota Street, Suite 1400, St. Paul, MN 55101, appeared for the Minnesota Department of Commerce, Office of Energy Security (OES).

Ronald M. Giteck and William Stamets, Assistant Attorneys General, 445 Minnesota Street, Suite 900, St. Paul, Minnesota 55101, appeared for the Office of the Attorney General Residential and Small Business Utility Division (OAG/RUD).

Andrew P. Moratzka, Mackall, Crounse & Moore, 1400 AT&T Tower, 901 Marquette Avenue, Minneapolis, Minnesota 55402, appeared for Flint Hills Resources, LP, Gerdau Ameristeel US, Inc., and Marathon Petroleum Company, LLC (Xcel Large Industrials).

James Strommen, Kennedy & Graven, 470 U.S. Bank Plaza, 200 South Sixth Street, Minneapolis, MN 55402, appeared for the Suburban Rate Authority.

Richard J. Savelkoul, Felhaber, Larson, Fenlon and Vogt, UBS Plaza, 444 Cedar Street, Suite 2100, St. Paul, MN 55101, appeared for the Minnesota Chamber of Commerce.

Pam Marshall, Executive Director, 823 East Seventh Street, St. Paul, Minnesota 55106, appeared for Energy CENTS Coalition (ECC).

Lloyd W. Grooms, Winthrop & Weinstine, Suite 3500, 225 South Sixth Street, Minneapolis, MN 55402, appeared for Verso Paper Corporation.

Alan R. Jenkins, Jenkins at Law, LLC, 2265 Roswell Road, Suite 100, Marietta, GA 30062, appeared for an association of large commercial customers of Xcel, including but not limited to Best Buy Co., Inc., Macy's Inc., Sam's West, Inc., Target, Inc., and Wal-Mart Stores, Inc. (Commercial Group).

Susan Mackenzie and Janet Gonzalez appeared for the staff of the Public Utilities Commission.

Based upon the record and the discussion among the participants at the prehearing conference, the Administrative Law Judge makes the following:

## **ORDER**

### **Parties, Intervention, and Public Participation**

1. The parties to this matter, as named in the Commission's Notice and Order for Hearing issued on December 23, 2008, are Xcel Energy and OES. Prior to the prehearing conference, Petitions to Intervene were filed by Xcel Large Industrials, the Minnesota Chamber of Commerce, the Suburban Rate Authority, the Commercial Group, the OAG/RUD, ECC, and Verso Paper. Upon inquiry at the prehearing conference, there were no objections to those Petitions, and they were GRANTED. In addition, Xcel had no objection to the proposed intervention of the International Brotherhood of Electrical Workers (IBEW), Local Union 949, Local Union 23, and Local Union 160, and those Petitions for Intervention were GRANTED. All of these Petitioners are, therefore, admitted to this proceeding as full parties.

2. Other persons who wish to intervene as parties in this proceeding must file a Petition to Intervene that complies with Minn. R. 1400.6200 with the Administrative Law Judge no later than February 19, 2009. Petitioners shall provide an e-mail address on the Petition or Notice of Appearance. Any person who is not affiliated with a party or a participant will be removed from the service list after that date. Copies of the Petition to Intervene must be served upon all existing parties and the Commission. A Notice of Appearance must be filed with the Petition. Objections to such a petition must be filed within seven days of the filing of the petition.

3. Members of the public need not become parties to participate in this matter. Members of the public may participate in the public hearings and may offer oral or written testimony and exhibits pursuant to Minn. R. 1400.6200, subp. 5, and 1400.7150, subp. 1. If time permits, public participation may also be permitted by the Administrative Law Judge during the evidentiary hearing. Any person who participates in a public or evidentiary hearing may be questioned by the parties and the ALJ.

Written public comments must be received by the Administrative Law Judge no later than May 15, 2009.

## **Schedule**

4. Xcel Energy has agreed to waive the statutory deadline for the Commission's final order on its application for a change in rates until October 23, 2009. It has filed a formal waiver with the Commission through that date. Based on this waiver, the following schedule is adopted:

<b>Event or Document</b>	<b>Event Date or Due Date</b>
Intervenor Direct Testimony	April 7, 2009
Public Hearings (Tentative Schedule <sup>1</sup> )	
Bloomington	April 13, 2009
Minneapolis	April 14, 2009
St. Paul	April 16, 2009
Oakdale	April 20, 2009
Winona	April 21, 1009
Mankato	April 23, 2009
St. Cloud	April 28, 2009
St. Paul (PUC)	April 29, 2009
Rebuttal	May 5, 2009
Surrebuttal	May 26, 2009
Evidentiary Hearings <sup>2</sup>	June 2-9, 2009
Initial Briefs	July 10, 2009

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<sup>1</sup> The public hearing schedule may be changed depending on room availability. All public hearings will commence at 7:00 p.m.

<sup>2</sup> The Evidentiary Hearings will commence at 9:30 a.m. at the PUC.

5. Notice of the public and evidentiary hearings shall be given by Xcel Energy as set forth in the Commission's Notice and Order for Hearing.

### Settlement

6. Minn. Stat. § 216B.16, subd. 1(a), requires the Administrative Law Judge to convene a proceeding for the purpose of encouraging settlement of any or all of the issues in this proceeding. The Administrative Law Judge encourages the parties to discuss opportunities for settlement with each other prior to the public hearings. During the days of the public hearings, an informal conference will be held to discuss the progress of such discussions.

### Discovery

7. A party may serve requests for information on any other party. All requests for information shall be made in writing by e-mail, and the requesting party shall follow the e-mail with a copy of the request sent by regular U.S. mail or other delivery service to all parties. **Information requests shall NOT be eFiled.** To the extent that a request includes material designated as Trade Secret or Nonpublic under the Minnesota Government Data Practices Act, Minn. Stat. Chap. 13, a request shall only be between the requesting party and responding party and shall not be e-mailed.<sup>3</sup> Requests shall be sent to the person(s) designated to receive data requests by the party from whom the information is sought. Any request received by e-mail or other means after 4:30 p.m. on a business day, on a weekend day, or on a Minnesota state holiday is considered received on the next business day.

8. The party responding to the request shall provide the requested information to the requesting party within eight business days of receipt of the information request. A business day does not include a weekend day or a Minnesota state holiday. In accordance with Minn. R. 1400.6100, subp. 1, the day that the information request is received is not counted in the eight-day period. If the request is received after 4:30 p.m. on a business day, the following business day is also not counted in the calculation of the eight-day response period.

9. Public responses to information requests shall be submitted by e-mail, and the responding party shall follow the e-mail with a copy of the response sent by regular U.S. mail or other delivery service, unless the receiving party agrees to accept responses by e-mail delivery only. **Responses to information requests shall NOT be eFiled.** If a response includes material designated as Trade Secret or Nonpublic, the

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<sup>3</sup> The parties may modify the provision precluding e-mailing of requests or responses containing Trade Secret or Nonpublic Data by agreement.

nonpublic response shall not be e-mailed. Any response received after 4:30 p.m. on a business day is considered to be received the following business day.

10. If the responding party is unable to send the response by e-mail because of the volume or nature of information included in a response, the responding party shall send the response by facsimile, U.S. mail, or delivery so that the requesting party receives the entire response including any material designated as Trade Secret or Nonpublic by the date due. Responding parties may utilize optical data storage (DVDs or CDs) to convey large volumes of data. If the response is sent by facsimile, the responding party shall follow the facsimile with a copy of the response sent by regular U.S. mail or other delivery service. There shall be a continuing obligation to update and supplement information responses with any responsive material that may subsequently be discovered or acquired by the responding party. The responsive information need not be supplied to other parties unless specifically requested by a party.

11. A party that wishes to receive e-mail copies of requests or responses shall notify the requesting or responding party, who shall provide the information in that format. If the request or response contains material designated as Trade Secret or Nonpublic information, the providing party may require that the requesting party comply with the terms of the Protective Order in this matter before providing the information.

12. If the responsive information cannot be supplied within eight business days, the responding party shall notify the requesting party as soon as reasonably possible in advance of the deadline of the reasons for not being able to supply the information and attempt to work out a schedule of compliance with the requesting party.

13. For Xcel, the following persons shall be served with an e-mail copy of any information requests or responses:

Christopher Clark ([christopher.b.clark@xcelenergy.com](mailto:christopher.b.clark@xcelenergy.com))  
Rebecca Eilers ([rebecca.d.eilers@xcelenergy.com](mailto:rebecca.d.eilers@xcelenergy.com))  
Gail Baranko ([gail.baranko@xcelenergy.com](mailto:gail.baranko@xcelenergy.com))  
Mary Martinka ([mary.a.martinka@xcelenergy.com](mailto:mary.a.martinka@xcelenergy.com))

Hard copies of requests/responses should be mailed to:

Christopher B. Clark Managing Attorney Xcel Energy Services, Inc. 414 Nicollet Mall, 5 <sup>th</sup> Floor Minneapolis, MN 55402	SaGonna Thompson Records Analyst Xcel Energy Services, Inc. 414 Nicollet Mall Minneapolis, MN 55402
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14. All disputes concerning the reasonableness of discovery requests and the timing and sufficiency of responses shall be resolved by the Administrative Law Judge upon motion of a party. Such motions may be brought informally by e-mail. Notice of such motions will be made by e-mail. Informal motions to address discovery requests and responses will usually be heard by telephone conference.

## **Prefiled Testimony**

15. Prefiled testimony and exhibits may be in any reasonable format that is understandable, logically organized, and capable of being cited by page and line number, paragraph number, or similar identifier.

16. A paper copy of prefiled testimony being offered for admission into the record at the hearing shall be provided for use at the hearing. The offering party will identify the document as having been eFiled (with the unique eFile identifying number of the document). The Administrative Law Judge will assign a hearing exhibit number to the document at the time that it is offered for admission at the hearing.

17. Corrections to any prefiled testimony shall be identified and marked on the paper copy of the exhibit. Those changes will be eFiled as soon as practical after the hearing. A hearing exhibit list will be prepared that identifies each exhibit in the hearing record, with its hearing exhibit number and unique eFile identifying number. The eFiled documents constitute the official record of the proceeding, along with any supplemental record data that cannot be eFiled. Any such supplemental record data will be identified by the ALJ as included in the official record.

18. Prefiled testimony that is not offered into the record, or stricken portions of prefiled testimony that is offered, shall be considered withdrawn and no witness shall be cross-examined concerning the withdrawn testimony. Any new affirmative matter that is not offered in reply to another party's direct case will not be allowed in rebuttal testimony and exhibits. Except for good cause shown, all revisions or corrections to any prefiled testimony shall be in writing and served upon the Administrative Law Judge and the parties no later than three days prior to the commencement of the evidentiary hearing.

## **Witnesses**

19. Subject to change by agreement of the parties or further order of the Administrative Law Judge, the order of testimony shall be: Xcel, Xcel Large Industrials, Chamber of Commerce, Suburban Rate Authority, Commercial Group, ECC, IBEW Local Unions, Verso Paper, other intervenors in the order of intervention, OAG/RUD, and OES. Questioning of the witnesses shall proceed in the same order, followed by Commission staff and the Administrative Law Judge.

20. In the event that a witness must be scheduled for a day certain to offer testimony, the sponsoring party should attempt to reach agreement with the other parties and then submit a request to the Administrative Law Judge.<sup>4</sup>

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<sup>4</sup> The parties have already reached agreement to take the testimony of Jeffrey Pollock on June 9, 2009.

21. Witnesses will be allowed ten minutes in which to summarize their prefiled testimony. In order for a witness to include new information in his or her summary, the party offering that witness' testimony must obtain the prior approval of the Administrative Law Judge upon a motion with a showing of good cause for not having addressed that information in prefiled testimony.

22. Parties shall examine and cross-examine witnesses through their attorneys if they are represented by counsel. Any party not represented by counsel may examine and cross-examine each witness through any one representative chosen by the party.

23. Except for good cause shown, objections by any party relative to the qualifications of a witness or the admissibility of any portion of a witness' prefiled testimony (except surrebuttal testimony) shall be considered waived unless the objecting party states its objection by motion made to the Administrative Law Judge, no later than June 1, 2009.

### **Filing of Documents (Excluding Information Requests and Responses)**

24. Original documents shall be filed using the Commission's eFiling system where feasible, in accordance with Minn. Stat. § 216.17, subd. 3, and the Commission's standards. In any instance where the eFiling system cannot be used, the original document shall be filed by delivery or mail with the Administrative Law Judge.

25. The effective date of filing shall be the date the document is eFiled, mailed by U.S. Mail, or delivered to the Administrative Law Judge. Parties using the eFiling system should retain the unique document identifier as proof of filing through that system. Proof of service to the service list in this proceeding shall be filed with each document or within three business days thereafter.

26. With the exception of Trade Secret and other Nonpublic Data, copies of all documents that are filed shall be served by e-mail according to the attached official service list by 4:00 p.m., and a hard copy shall also be mailed or delivered that day to the persons so indicated on the official service list. The list will be revised as necessary by the Office of Administrative Hearings.

27. Hard copies of trade secret and other nonpublic data shall be transmitted by U.S. Mail or delivery to the parties who have signed Exhibit A to the Protective Order. Such documents may be served on the next business day following the filing of the public version.

28. After the Administrative Law Judge's Report is issued, the parties shall file the original of all documents with the Executive Secretary of the Commission in accordance with the Commission's standards.

29. Where Trade Secret or Nonpublic Data is filed with the Administrative Law Judge, that filing shall be prepared and marked in accordance with the Public Utilities Commission's September 1, 1999, Revised Procedures for Handling Trade Secret and

Privileged Data. The procedures are available from the Commission website and may be viewed at [www.puc.state.mn.us/docs/tradsecret.pdf](http://www.puc.state.mn.us/docs/tradsecret.pdf). Access to nonpublic data shall be governed by the Protective Order to be issued in this proceeding.

Dated: January 28, 2009

s/Kathleen D. Sheehy

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KATHLEEN D. SHEEHY  
Administrative Law Judge